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SUPREME COURT OF THE UNITED STATES.

No. ~~225.~~ 137.

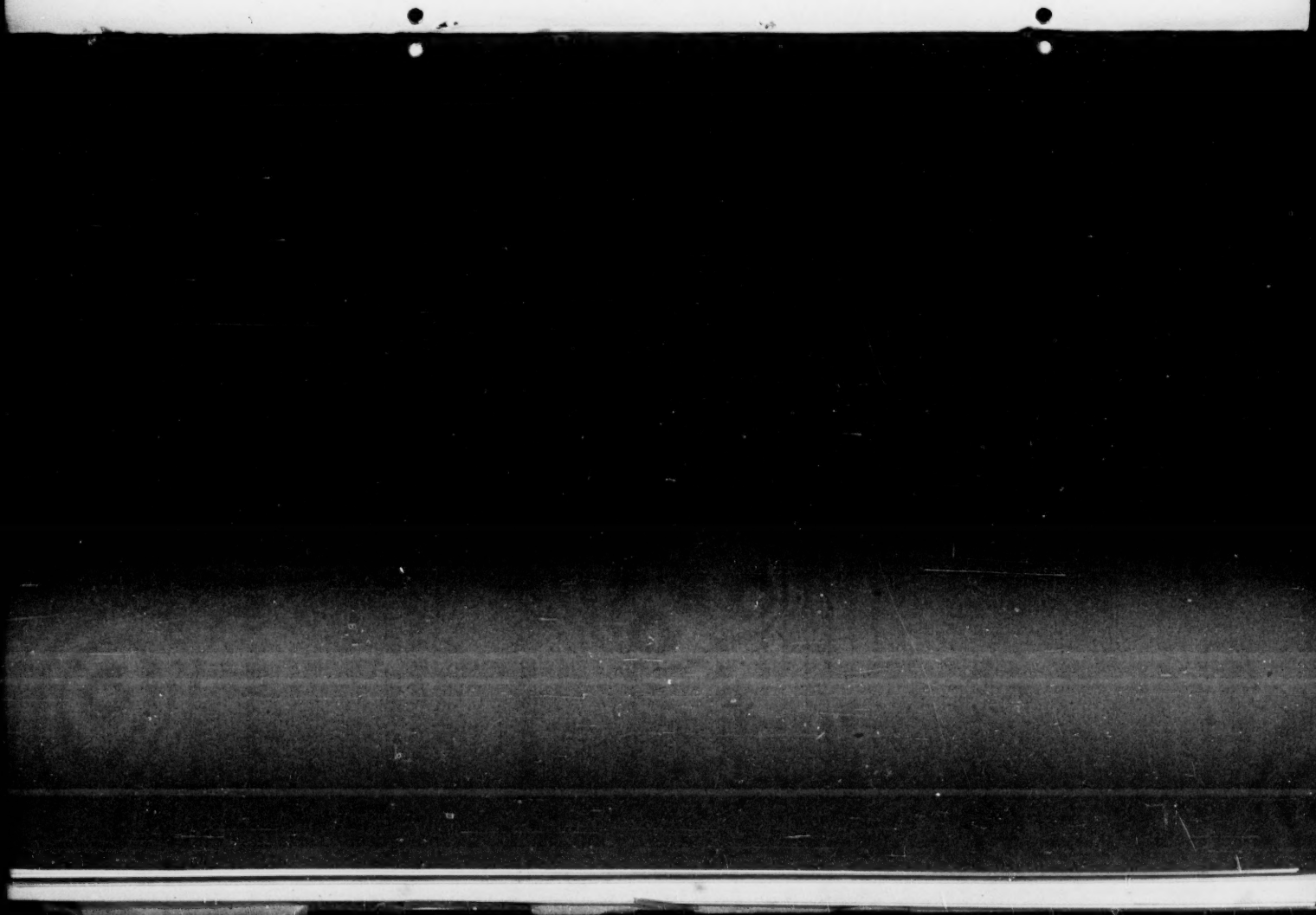
PHILO S. SHELTON AND PHILO S. SHELTON, THE YOUNGER, MERCHANTS, DOING BUSINESS UNDER THE NAME AND STYLE OF PHILO S. SHELTON & COMPANY, PLAINTIFFS IN ERROR,

vs.

ARTHUR W. AUSTIN, COLLECTOR FOR THE DISTRICT OF BOSTON AND CHARLESTOWN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

GOVERNMENT PRINTING OFFICE.



SUPREME COURT OF THE UNITED STATES.

No. 225.

PHILO S. SHELTON AND PHILO S. SHELTON, THE YOUNGER, MERCHANTS, DOING BUSINESS UNDER THE NAME AND STYLE OF PHILO S. SHELTON & COMPANY, PLAINTIFFS IN ERROR,

vs.

ARTHUR W. AUSTIN, COLLECTOR FOR THE DISTRICT OF BOSTON AND CHARLESTOWN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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1 UNITED STATES, *ss:*

[SEAL.] The President of the United States to the judges of the circuit court holden in and for the district of Massachusetts, greeting:

Because that in the record and process, and also in the rendering of judgment, in a suit before you, or some of you, between Philo S. Shelton and Philo S. Shelton, the younger of that name, of Boston, in the district of Massachusetts, merchants and partners, under the style of Philo S. Shelton & Company, plaintiffs, and Arthur W. Austin, a citizen of West Roxbury, a citizen of the commonwealth of Massachusetts and of the United States of America, and collector of the customs for the district of Boston and Charlestown, in said district of Massachusetts, defendant, in a plea of the case, a manifest error has intervened, to the great damage of the said plaintiffs, as in their complaint has been stated. And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then under your seal you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December current, at Washington, being the present seat of the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable James M. Wayne, esquire, associate justice of the said Supreme Court, at Washington aforesaid, this first day of December, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

N. J. CLIFFORD, *Clerk.*

Allowed by—

NATHAN CLIFFORD,
Associate Jus. Sup. C't of the United States.

2 CIRCUIT COURT OF THE UNITED STATES, *Massachusetts District, ss:*

And now here the judges of the circuit court of the United States in and for the said district make return of this writ by annexing hereto and sending herewith, under seal of said circuit court, as within commanded, a true and attested copy of the record and process in the suit within mentioned and of all proceedings therein.

In testimony whereof, I, N. J. Clifford, clerk of said circuit court of the United States within and for the district of Massachusetts, have hereunto set my hand and the seal of said court this first day of December, A. D. 1864.

[SEAL.] N. J. CLIFFORD, *Clerk.*

3 CIRCUIT COURT OF THE UNITED STATES, *District of Massachusetts, ss:*

United States of America to Arthur W. Austin, of West Roxbury, a citizen of the commonwealth of Massachusetts and of the United States, greeting:

You are hereby cited and admonished to be and appear before the chief justice and associate justices of the Supreme Court of the United States on the first Monday of December instant, A. D. 1864, at Washington, the present seat of the national government of the United States, then and there to answer to writ of error this day sued out of the clerk's office of the circuit court of the United States for the first circuit and district of Massachusetts, wherein Philo S. Shelton and Philo S. Shelton, the younger of that name,

of Boston, in the district of Massachusetts, merchants and partners, under the style of Philo S. Shelton & Company, are plaintiffs in error and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable James M. Wayne, associate justice of the Supreme Court of the United States, this first day of December, A. D. eighteen hundred and sixty-four.

NATHAN CLIFFORD,
Associate Justice Sup. Court U. S.

4 DEC. 1ST, 1864.

Service acknowledged to have been received in due form.
CHAS. LEVI WOODBURY, *Def't's Att'y.*

5 *Bond.*

Know all men by these presents that Philo S. Shelton and Philo S. Shelton, jr., making and constituting the firm of Philo S. Shelton & Company, as principals, and Robert G. S. Shelton and R. S. S. Andros, as sureties, are holden and stand firmly bound and obliged unto Arthur W. Austin in the full and just sum of five hundred dollars, to be paid unto the said Arthur W. Austin, his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals; dated the first day of December, in the year of our Lord one thousand eight hundred and sixty-four.

The condition of this obligation is such that whereas the said Philo S. Shelton and Philo S. Shelton, the younger, have this day sued out of the clerk's office of the circuit court of the United States, district of Massachusetts, a writ of error wherein the said Philo S. Shelton and Philo S. Shelton, the younger, are plaintiffs and the said Arthur W. Austin is defendant, which said writ is returnable at the next term of the Supreme Court of the United States, to be holden at Washington, on the first Monday of December instant: Now, if the said Philo S. Shelton and Philo S. Shelton, the younger, shall prosecute their said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this bond shall be void; otherwise, the same shall remain in full force and effect.

PHILO S. SHELTON & CO. [SEAL.]
ROB'T G. S. SHELTON. [SEAL.]
R. S. S. ANDROS. [SEAL.]

Signed, sealed, and delivered in presence of—
MILTON ANDROS.

Approved by N. J. Clifford, clerk U. S. C. C., by order of court.
N. J. CLIFFORD.

A true copy of the bond to prosecute and of the approval thereof.
Attest: N. J. CLIFFORD, *Clerk.*

6 UNITED STATES OF AMERICA, *Massachusetts District, ss:*

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Saturday, the fifteenth day of October, in the year of our Lord one thousand eight hun-

dred and sixty-four, before the Honorable Nathan Clifford, associate justice, and the Honorable Peleg Sprague, district judge.

PHILO S. SHELTON AND PHILO S. SHELTON, THE YOUNGER of that name, of Boston, in the district of Massachusetts, merchants and partners, under the style of Philo S. Shelton & Company, plaintiffs,

vs.

ARTHUR W. AUSTIN, A CITIZEN OF WEST ROXBURY, A CITIZEN of the commonwealth of Massachusetts and of the United States of America, and collector of the customs for the district of Boston and Charlestown, in our district of Massachusetts, defendant.

In a plea of the case for that heretofore, to wit, on the thirtieth day
7 of September, in the year of our Lord one thousand eight hundred and fifty-nine, the said defendant being indebted to the plaintiffs in the sum of five thousand dollars, demanded and received of the plaintiffs by the defendant under color of a law of the United States for the collection of duties, (and by the plaintiffs paid under protest,) and before that time had and received by the defendant to the use of the plaintiffs, promised to pay the same when he should be thereto afterwards requested, yet he hath not paid the same or any part thereof, to the damage of the said plaintiffs, as they say, the sum of five thousand dollars.

The writ in this case bears date September 30th, A. D. 1859. The action was entered at the October term, A. D. 1859, of this court, when and where the parties appeared by their respective attorneys; and on the 14th day of May, A. D. 1860, the following agreed statement of facts, which is a part of the record, was filed, namely:

PHILO S. SHELTON *et al.*

vs.

ARTHUR W. AUSTIN, COLLECTOR OF CUSTOMS FOR THE REV-
8 enue, district of Boston and Charlestown.

Submitted upon the following agreed statement of facts, which is a part of the record:

It is agreed that the plaintiffs imported certain hhds., tierces, and barrels of molasses into the port of Boston in the barque or vessel called the Meldon, from Mantanzas, in the island of Cuba; that at the period of the exportation of the said molasses from the port of Mantanzas, in the island of Cuba aforesaid, it was a sound and sweet article, and that on its importation into the port of Boston the same was soured, and that said souring took place during the voyage aforesaid.

It is further agreed that there was a material difference between the value of sweet and sour molasses at the port of exportation, and also at the port of importation; that sweet molasses was of a greater value than sour molasses; and that this molasses was entered at the full value of sweet molasses; and the plaintiffs then demanded to have the damages appraised, ascertained, and allowed in the computation of duties; and that thereupon the said defendant caused the same to be appraised and ascertained, but after-
9 wards (under instructions of the Hon. Secretary of the Treasury) refused to allow the same, and duties were exacted by him on the invoice value and were paid, but under the following protest, in writing, filed with the said collector at the time of the payment thereof.

BOSTON, *Sept.* 28, 1859.

To the collector of customs for the port of Boston:

We hereby protest against the exaction of the duties demanded by you on an invoice of molasses imported by us in the barque Meldon from Matanzas, and object to the payment thereof, on the ground that said molasses having received damage on the voyage of importation, we are entitled by law to have such damage appraised and ascertained and the rate or percentage thereof deducted from the original amount subject to duty, and cannot be required to pay duties upon any other or greater amount than that remaining after such deduction, which amount is the legal dutiable value. The duties demanded are paid only to obtain possession of the goods, and you
10 are hereby notified that the amount illegally exacted will be reclaimed.

P. S. SHELTON & CO.

If the court shall be of opinion that damage by souring during the voyage of importation is a damage on the voyage within the meaning of the provision of the fifty-second section of the act of March 2d, 1799, a judgment shall be entered for the plaintiffs and the cause sent to an auditor to asses the damages; otherwise a judgment to be entered for the defendant for costs.

MILTON ANDROS, *Att'y for Pl'ffs.*
CHAS. LEVI WOODBURY,
U. S. Att'y, for Defendant.

The cause came on to be heard at the October term, A. D. 1861, of this court, upon the pleadings and agreed statement aforesaid, and was argued by counsel, and was thence continued from term to term to the present term. And now, after mature deliberation thereon had, the court are of opinion that damage by souring during the voyage of importation is not a damage on the voyage within the meaning of the provision of the fifty-second
11 section of the act of March 2d, 1799, and that the plaintiffs have not made out a legal cause of action in their favor. It is thereupon considered and ordered by the court that said Arthur W. Austin, defendant, recover of the said Philo S. Shelton and Philo S. Shelton, the younger, plaintiffs, his costs of suit, taxed at twenty-nine dollars and fifty-six cents.

UNITED STATES OF AMERICA, *District of Massachusetts, ss:*

I, N. J. Clifford, clerk of the circuit court of the United States for the first circuit, Massachusetts district, do hereby certify that the foregoing is a true copy of the record and of all proceedings in the cause of Philo S. Shelton and Philo S. Shelton, the younger of that name, of Boston, in the district of Massachusetts, merchants and partners, under the style of Philo S. Shelton & Company, plaintiffs, *versus* Arthur W. Austin, a citizen of West Roxbury, a citizen of the commonwealth of Massachusetts and of the United States of America, and collector of the customs for the district of Boston and Charlestown, in our district of Massachusetts, defendant, in this court deter-
12 mined.

In testimony whereof, I have hereto subscribed my name and affixed the seal of said court, at Boston, in said district, this first day of December, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

[SEAL.] N. J. CLIFFORD, *Clerk.*

Filed December 10, 1864.

In the Supreme Court of the United States.

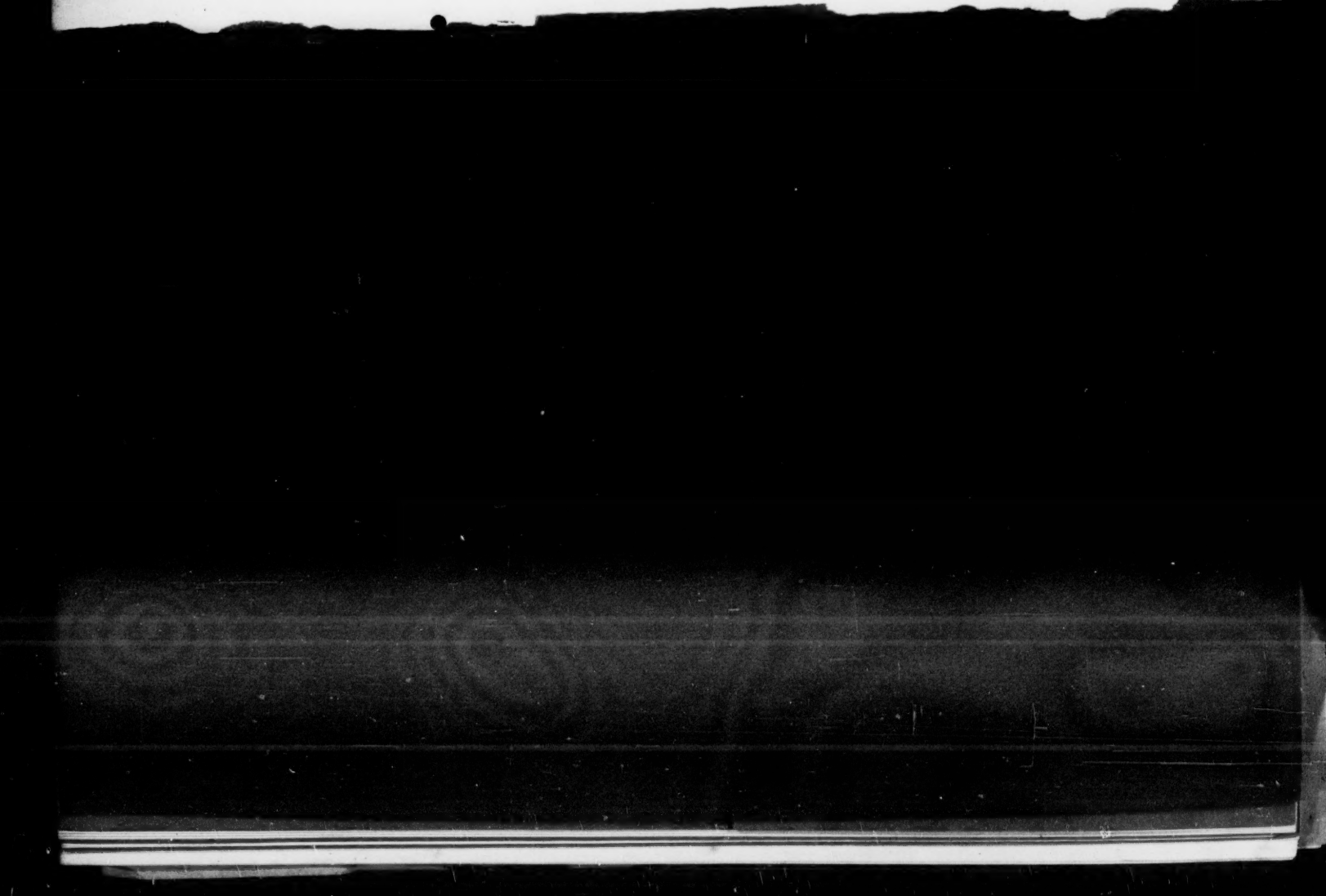
DECEMBER TERM, 1866.

PHILO S. SHELTON ET AL
vs.
AUTHUR W. AUSTIN. } No. 137.

In error to the Circuit Court of the United States for the District of Massachusetts.

BRIEF OF UNITED STATES.

HENRY STANBERY,
J. HUBLEY ASHTON,
For United States.



In the Supreme Court of the United States.

DECEMBER TERM, 1866.

PHILO S. SHELTON *et al.*, plaintiffs in error,
vs.
ARTHUR W. AUSTIN, collector, etc.
No. 137.

In error to the circuit court of the United States for the district of Massachusetts.

THE CASE.

Philo S. Shelton & Co., merchants of Boston, imported certain hogsheads, tierces, and barrels of molasses into that port from Matanzas, in Cuba, which, at the time of its exportation, was a sound and sweet article, but which at the time of importation was soured. The souring took place during the voyage. Between the value of sweet and that of the sour molasses there was a material difference, at both ports, sweet molasses being the more valuable. This molasses, notwithstanding its depreciation by souring, was entered in the usual manner and at the full value of sweet molasses, at the custom-house at Boston. After entry, the importers, who are the plaintiffs, demanded to have the damages appraised, ascertained, and allowed in the computation of duties. The collector, who is the defendant, acceded to the demand so far as the appraisement and estimation of damages, but the Secretary of the Treasury disallowed the corresponding deduction from the amount of duty; the collector thereupon exacting duties as for the invoice value of the merchandise, which the plaintiffs paid under protest. The difference is some thousands of dollars. Assumpsit was brought by the plaintiffs, and the above facts were agreed upon by the parties, in the circuit court of the United States for the Massachusetts district. It was further agreed that—

"If the court shall be of opinion that damage by souring during the voyage of importation is a damage on the voyage within the meaning of the provision of the fifty-second section of the act of March 2, 1799, a judgment shall be entered for the plaintiffs and the cause sent to an auditor to assess the damages; otherwise, a judgment to be entered for the defendant for costs." (Rec., pp. 3, 4.)

The cause came on for final hearing at the October term of said court in 1864, and judgment was thereupon entered for the defendant in conformity to the decision of the court and the said stipulations of the parties. (Rec., pp. 2, 3.) The case is now brought to this court upon a writ of error by the plaintiffs.

No bill of exceptions or assignment of errors appears in the record.

The controversy involves the sole question whether the construction given in the court below to the fifty-second section of the act of 2d March, 1799, (1 Statutes at Large, 665–666,) is correct.

ARGUMENT.

The laws of the customs revenue are in *pari materia*, and, in this case especially, an extended context is requisite for an understanding of the provisions in question. We cite them at large, omitting only some immaterial paragraphs:

THE STATUTE IN CONTROVERSY.

SEC. 52. *And be it further enacted*, That all goods, wares, and merchandise of which entry shall have been made incomplete, or without the specification of particulars, either for want of the original invoice or invoices, or for any other cause, or which shall have received damage during the voyage, to be ascertained by the proper officers of the port or district in which the said goods, wares, or merchandise shall arrive, shall be conveyed to some warehouse or storehouse to be designated by the collector, in the parcels or packages containing the same, there to remain with due and reasonable care, at the expense and risk of the owner or consignee, under the care of some proper officer, until the particulars, cost, or value, as the

case may require, shall have been ascertained, either by the exhibition of the original invoice or invoices thereof, or by appraisement at the option of the owner, importer, or consignee, in manner hereafter provided, and until the duties thereon shall have been paid or secured to be paid, and a permit granted by the collector for the delivery thereof. And for the appraisement of goods, wares, and merchandise, not accompanied with the original invoice of their cost, or to ascertain the damage thereon received during the voyage, it shall be lawful for the collector, and upon request of the party, he is required to appoint one merchant, and the owner, importer, or consignee to appoint another, who shall appraise or value said goods, wares, or merchandise accordingly, which appraisement shall be subscribed by the parties making the same, and be verified on oath or affirmation before the said collector; which oath or affirmation shall be in the form following, to wit:

[Omitting the form.]

And in respect to articles that have been damaged during the voyage, as aforesaid, whether subject to a duty ad valorem, or which are chargeable with a specific duty, either by number, weight, or measure, the appraisers, as aforesaid, shall in like manner ascertain and certify, to what rate or percentage, the said goods, wares, or merchandise are damaged, and the rate or percentage of damage, so ascertained and certified, shall be deducted from the original amount, subject to a duty ad valorem, or from the actual or original number, weight, or measure on which specific duties would have been computed: *Provided*, That no allowance for the damage on any goods, wares, and merchandise that have been entered, and on which the duties have been paid or secured to be paid, and for which a permit has been granted to the owner or consignee thereof, and which may on examining the same prove to be damaged, shall be made, unless proof to ascertain such damage shall be lodged in the custom-house of the port or place where such goods, wares, or merchandise have been landed, within ten days after the landing of such merchandise. And every person who shall be appointed to ascertain the damage during the voyage, of any goods, wares, or merchandise, shall take and subscribe an oath or affirmation in the following form, to wit:

[Omitting the form.]

(1 Statutes at Large, pp. 665–666.)

The question, by express stipulation, is, whether the words in the above quoted section, "*articles that have been damaged during the voyage*," are applicable to the molasses referred to:

We here quote from the act of March 1, 1823, a section still in force:

SEC. 21. *And be it further enacted*, That, before any goods, wares, or merchandise, which may be taken from any wreck, shall be admitted to an entry, the same shall be appraised, in the manner prescribed in the sixteenth section of this act; and the same proceedings shall be ordered and executed in all cases where a reduction of duties shall be claimed on account of damage which any goods, wares, or merchandise, shall have sustained in the course of the voyage; and in all cases where the owner, importer, consignee, or agent, shall be dissatisfied with such appraisement, he shall he entitled to the privileges provided in the eighteenth section of this act.

(Act 1st March, 1823; 3 Stat. at Large, 736)

The manner of appraisement referred to as provided in the fifth section, and the privileges provided in the eighteenth section, are not material to this issue.

We now quote from the act of 3d March, 1857:

SEC. 2. *And be it further enacted*, That it shall be lawful for the owner, consignee, or agent of imports which have been actually purchased, or procured otherwise than by purchase, on entry of the same, to make such addition in the entry to the cost or value given in the invoice as, in his opinion, may raise the same to the true market value of such imports in the principal markets of the country whence the importation shall have been made; and to add thereto all costs and charges which, under existing laws, would form part of the true value at the port where the same may be entered, upon which the duties should be assessed. And it shall be the duty of the collector within whose district the same may be imported or entered, to cause the dutiable value of such imports to be appraised, estimated, and ascertained, in accordance with the provisions of existing laws; and if the appraised value thereof shall exceed, by ten per centum or more, the value so declared on the entry, then, in addition to the duties imposed by law on the same, there shall be levied, collected, and paid a duty of twenty per centum ad valorem on such appraised value: *Provided, nevertheless*, That under no circumstances shall the duty be assessed upon an amount less than the invoice or entered value, any law of Congress to the contrary notwithstanding.

(Act 3d March, 1857; 11 Stat. at Large, 199.)

The rule contained in the above proviso has been kept in force by re-enactment from time to time, having been first laid down in 1818. (Act 3d April, 3 Statutes at Large, 433.)

Various other statutes throw more or less light upon the disputed meaning of the provision in question, but in the lucid and exhaustive opinion of the court below, which we subjoin entire, they are all compared, with a result in favor of the defendant, and calculated to establish the points we here briefly offer.

FIRST.

Goods which have been completely entered, under whatever circumstances such entry has been made, are not entitled to any allowance for damage, from whatever cause, unless proof of such damage has been furnished within ten days after the landing of the goods, and other action had.

This is so because, without a statutory exception, the general law regulating entries of goods and assessments of duties would of course disallow such damage; and the exception claimed in this suit, by express terms, withholds its benefits where "proof to ascertain such damage" has not been "lodged in the custom house" of the port "within ten days after the landing of such merchandise." As, in this case, the condition precedent, as to lodging proof within ten days, &c., is not mentioned, and yet the entry made was regular and complete, it seems necessarily to follow that the entire section mentioned in the stipulation at bar is inapplicable, except as it expressly prohibits the allowance claimed, viz: "*Provided*, that *no allowance* for the damage of *any* goods, wares, or merchandise that have been *entered*, and on which the duties have been *paid* or *secured* to be paid, and for which a *permit* has been granted the owner or consignee thereof, and which may, on examining the same, prove to be damaged, *shall be made*, unless," &c.

It will be observed that this prohibition of allowance is directed against cases of *damage only*, and not against cases in which "entry shall have been made incomplete, or without

the specification of particulars, either for want of the original invoice or invoices or for any other cause," exclusive of damage during the voyage. In these cases allowance is made after incomplete entry for the obvious reason that such entry must have been made *without invoice* or other equivalent data. But on the corresponding principle, when the entry had been predicated upon the *invoice*, it was not to be afterwards disturbed by the importer; but such entry might be by him *conditioned* upon an appraisement where damage had reduced the just value, which appraisement should stand in the *place of the invoice*, by his lodging proof within ten days after landing the goods. Such lodging of proof, in short, would operate to supplant the invoice as a rule of assessment, and thus bring his damaged goods on the same plane with goods where the original invoice was wanting, or, for any other cause, the particulars were imperfectly specified.

It follows, of course, that as there was a condition precedent which had not been fulfilled by the plaintiffs, they have not brought their damaged goods to the condition of goods without invoice, &c., for which latter the law which they invoke frames the relief.

SECOND.

But any provision of the act of 1799 *favorable to the plaintiffs was repealed by the act of* 1823, (supra,) *and consequently, even by stipulation, judgment should be for the defendant.*

We have seen that the act of 1823, § 21, declares that *no entry shall be admitted* until *after appraisement* of goods taken from any wreck, "and the *same* proceedings shall be ordered and executed in *all cases where a reduction of duties shall be claimed on account of damage which any goods, wares, or merchandise shall have sustained in the course of the voyage.*"

If, therefore, under § 52, act of 1799, the plaintiffs could have claimed the benefit of *any* appraisement of damages to their goods, "sustained in the course of the voyage," after they had procured them to be entered at the custom-house, (with or without the lodgement therein of proof within ten days after land-

ing,) under the terms of that section, it is manifest, they could not have the benefit of such an appraisement *now*, since the act of 1823 thus expressly prohibits the admission of the very entry they made. Therefore, if the importers chose to forego this prohibition of entry, by entering the goods according to invoice, they must submit to the consequences of their voluntary action.

THIRD.

Whenever, in fact, the invoice has been the basis of an entry at the custom-house, complete or incomplete, or whenever an entry has been made with a specific valuation, there is no power to reduce the corresponding assessment of duties.

As an importer is not, in any case of damage in the course of the voyage, imperfect data, wreck, &c., obliged to make entry before appraisement, under the statutes cited, the reason of the rule binding him to abide his entry is palpable. But the rule itself, prescribed in 1818, and re-enacted frequently since, is distinctly mandatory in the broad language of the proviso of the act of 1857, quoted above: "*Provided, That under no circumstances shall the duty be assessed upon an amount less than the invoice or entered value, any law of Congress to the contrary notwithstanding.*"

We invite consideration to the fuller exposition of the question contained in the learned opinion of the court below, here subjoined, and submit that the judgment should be affirmed with costs.

HENRY STANBERY,
Attorney General.
J. HUBLEY ASHTON,
Assistant Attorney General.

OPINION OF MR. JUSTICE CLIFFORD.

This is an action of assumpsit brought by the plaintiffs against the defendant, as collector of the port of Boston, to recover back certain duties, which, as they allege, the defendant unlawfully exacted of them, and which they paid under protest. According to the agreed statement of facts it appears that the duties were exacted and paid on a cargo of molasses imported into the port of Boston from Matanzas in the island of Cuba. When the article was exported at Matanzas it was sound and sweet, but on its arrival here it was found that it had become sour, and the case shows that "the souring took place during the voyage." Sweet molasses was of greater value than that which had become sour, both at the place of exportation and in the market here, and the parties agree that the difference in that behalf materially affected the value of the importation. Whether the plaintiffs knew that the molasses had become soured or not at the time of the arrival of the vessel here is not distinctly stated, but the case shows that they made the entry in the custom-house at the full value of sweet molasses, and then demanded to have the damage ascertained and appraised, and the difference allowed in the computation of the duties. That demand was so far acceded to that the defendant caused the damage to be appraised and ascertained, but afterwards refused, under the instructions of the department, to allow the same, and the duties were exacted and paid on the invoice valuation. Taken as a whole the case shows that the entry conformed to the invoice, both as to the description of the article and the value of the importation, and it does not appear that anything more than that is meant by the statement that the entry was made at the full value of sweet molasses. Protest was made on the alleged ground that the molasses having received damage during the voyage the plaintiffs were entitled to have such damage appraised and ascertained, and have the same deducted from the entered value in the computation of the duties, or, to use the language of the protest, "to have the rate or percentage thereof deducted from the original amount subject to duty." No complaint is made that the local appraisers marked up the goods, or that the duties were assessed on any greater sum than the entry and invoice valuation. On the contrary, the clear implication is that the local appraisers adopted the entry and invoice valuation as to the true dutiable value of the importation, and that the duties were assessed accordingly by the collector. But the agreed statement does not stop there, as has already appeared. It also shows that the molasses had become sour during the voyage, and that the de-

fendant, on the demand of the plaintiffs, caused the damage to be appraised and ascertained. On what basis the damage was appraised and ascertained does not very distinctly appear, but it does appear that the defendant, under the instruction of the department, subsequently refused to allow the same, and the duties were exacted and paid on the invoice value. All importations subject to an *ad valorem* duty are required to be appraised at the actual market value or wholesale price, at the period and place of exportation, and to enable the collector to perform that duty importers are required to make an entry of their respective importations, which must be accompanied by the invoice; and it is provided that if the appraised value of the goods exceeds by ten per cent. or more the value declared on the entry, then, in addition to the duties imposed by law on the same, there shall be levied, collected, and paid, a duty of twenty per centum *ad valorem* on such appraised value. Whenever the invoice value is too low, the importer is allowed to make whatever additions on the entry he may think proper so as to bring up the entered value to the requirement of the law of Congress, in order to avoid that additional charge, but there is no corresponding provision authorizing the merchant to make any deduction from the invoice valuation on any pretence whatever.

Short quantity or goods lost or destroyed during the voyage may be deducted, because it cannot be held that such goods ever arrived in port, and the entry at the custom-house is not required to embrace merchandise which was never imported into the United States. Such an entry at the custom-house is required in order that the actual market value of the importation may be appraised and ascertained, and consequently importers are allowed to make such additions to the invoice valuation as may be necessary to make it conform to the truth, but it is provided by the eighth section of the act of the 30th of July, 1846, that under no circumstances shall the duty be assessed upon an amount less than the invoice value, any law of Congress to the contrary notwithstanding. (9 Statutes at Large, p. 43; 11 Stat. at Large, p. 199, chap. 101, sec. 2.) Beyond question that provision is still in force, but I am of the opinion that Congress never intended that it should have any application whatever to goods damaged during the voyage, or to goods imported which were unaccompanied with the original invoice. Where goods were damaged during the voyage, or were not accompanied with the original invoice of the cost thereof, the importation was subject to appraisement by the act of the 31st of July, 1789, and it was provided that the duties upon such goods should be estimated according to such

valuation. (1 Stat. at Large, p. 41, sec. 16.) Similar provision was made by the thirty-seventh section of the act of the 4th of August, 1790, and its benefits were extended to articles charged with a specific duty, whether the duty was levied by number, weight, or measure, (1 Stat. at Large, p. 167.) More detailed provision, however, was made upon the subject by the act of the 2d of March, 1799, which is the act relied on by the plaintiffs. (1 Stat. at Large, p. 665.) Merchandise damaged during the voyage, or of which entry was incomplete, either for the want of the original invoice or for any other cause, was required by the fifty-second section of that act to be conveyed in the parcels or packages containing the same to some warehouse or storehouse to be designated by the collector, there to remain at the expense and risk of the owner or consignee "until the particulars, cost or value" were ascertained in the mode or modes therein prescribed. Articles which had been damaged during the voyage, whether subject to a duty *ad valorem*, or which were chargeable with a specific duty, either by number, weight, or measure, were required to be appraised, and the appraisers were directed to ascertain and certify to what rate per cent. the goods were damaged. And it was also provided that the rate or percentage of damage, so ascertained and certified, should be deducted from the original amount, subject to duty *ad valorem*, or from the actual or original number, weight, or measure on which the specific duties would have been computed. Importers were required, by the supplemental act passed on the 30th of April, 1818, to declare on oath that the invoice of the goods produced, if the goods were subject to an *ad valorem* duty, exhibited the true value of the goods at the place from which they were imported, and it also prescribed certain new and important regulations touching the appraisement of imported goods and the collection of *ad valorem* duties. Among other things, the twelfth section of the act provides that in all cases where the appraised value shall be less than the invoice value the duty shall be charged on the invoice value in the same manner as if no appraisement had been made. But this provision must have reference only to appraisements made on entry at the custom-house when the entry is required to be accompanied by the invoice, because it is only in such cases that the entry is necessarily based on the invoice, and this construction is greatly strengthened by the consideration that the fifteenth section of the same act makes a special provision for the assessment of duties upon goods damaged in the course of the voyage, and goods taken from a wreck. Goods damaged in the course of the voyage, and goods taken from a wreck are by that section placed upon the same foot-

ing, and in regard to both classes it is expressly provided that before they shall be admitted to entry they shall be appraised in the manner provided by the ninth section of the act which requires the appraisers to report to the collector the true value thereof when purchased, at the place or places from which the same were imported. Comparing the two sections together, therefore, it is obvious that the former has no application whatever to the regular proceedings prescribed for ascertaining and assessing duties upon goods damaged in the course of the voyage, or upon goods taken from a wreck. Prior to the act of the twentieth of April, 1818, there was no act of Congress admitting wrecked goods to entry under any circumstances, or any provision upon the subject, other than what related to goods damaged during the voyage. That act was extended by the act of the eighteenth of April, 1820, and was in full force when the appraisement act of the first of March, 1823, went into operation. (3 Stat. at Large, pp. 563 and 736.) Nothing can be more certain than the fact that the twenty-first section of the last named act prohibits goods damaged in the course of the voyage, and goods taken from a wreck from being admitted to entry until the same shall have been appraised in the manner provided in the sixteenth section of the same act. By the sixteenth section of the act the appraisers are required to report the true value thereof, according to the fifth section of the act, and by the fifth section of the act it is provided, in effect, that *ad valorem* rates of duty shall be estimated by adding all charges, except insurance, to the actual cost of the goods, if the same were purchased, or to the actual value thereof if procured otherwise than by purchase, *or to the appraised value if the same were appraised*, and also a certain per centum on the cost or value, depending as to the rate on the place or country from which the goods were imported.

Reference is made to these details only for the purpose of remarking that goods damaged in the course of the voyage are as clearly required to be appraised before they can be admitted to entry as goods taken from a wreck, and to verify that remark it is only necessary to refer again to the twenty-first section of the act, which, after expressly making that requirement in regard to the latter class, goes on to provide that the same proceedings shall be ordered and executed *in all cases* where a reduction of duties shall be claimed on account of damage which any goods shall have sustained during the voyage. All such importations are by that act classed with goods taken from a wreck and are required to be appraised before they can be admitted to entry, and the twenty-first section of the act also provides that in all cases where the owner, importer, con-

signee or agent, shall be dissatisfied with such appraisement he shall be entitled to the privileges provided in the eighteenth section of the act. Recurring to the eighteenth section of the act, it will be seen that it makes provision for an appeal on the part of the merchant, and a second appraisement, and in case the merchant is still dissatisfied it is made lawful for him to refer the case to the Secretary of the Treasury. But, whenever the case is so referred, the Secretary of the Treasury is authorized and empowered to decide thereon, or to require further testimony in the case in such manner as he may deem proper, and to order the goods to be entered accordingly.

Appraisement is to be made, in the first place, by the appraisers appointed under the sixteenth section of the act, but in case the merchant is dissatisfied with their report he may employ, at his own expense, two respectable resident merchants who, with the government appraisers, shall examine and inspect the goods in question, and after such examination and inspection they are required to report the value thereof, if they agree therein, and if not, the circumstances of their disagreement to the collector. Where the appraisers disagree the practice is for the collector to decide the matter in difference by adopting one or the other valuation, as he may deem just, unless the merchant elects to refer the case to the Secretary of the Treasury, but if he does so elect, the decision of the department is final and conclusive, and the entry must conform to their decision. (Belcher *et al. v.* Linn, 24 How. 522; Rankin *v.* Hoyt, 4 How., 327; Stairs *v.* Peaslee, 18 How., 524.) Entry of the goods must be made before the duties can be assessed, but it cannot be made during the pendency of any of these proceedings, because it must be founded on the report of the appraisers, if they agree, or if not, on the decision of the collector, or of the Secretary of the Treasury. Undoubtedly some of the regulations prescribed in the act under consideration are repuguant to the provisions of the fifty-second section of the act of the 2d of March, 1799, so far as the latter have respect to goods damaged during the voyage, and to that extent the provisions of the last mentioned act must be considered as modified or repealed. None of the provisions of the act of the 1st of March, 1823, however, have any respect to merchandise of which entry has been made incomplete, either for the want of the original invoice or for any other cause, but in respect to all such importations and entries the proceedings must still conform to the antecedent law upon that subject. Whenever a vessel arrives from a foreign port having merchandise on board which is subject to duty, it is incumbent on the master in every case to present his manifest

and notify the collector of the arrival of the vessel; and when that is done, and the owner, importer, consignee, or agent has presented a true invoice of the goods to the collector, he may then demand, if the goods have received damage in the course of the voyage, that the same shall be appraised in the manner prescribed in the regulations contained in the act of the 1st of March, 1823; and if he acquiesces in the report of the appraisers, and does not refer the case to the Secretary of the Treasury, he may claim, as matter of right, to have the deduction made as prescribed in the fifty-second section of the act of the 2d of March, 1799. Although the goods were damaged in the course of the voyage, yet the importer is not obliged to demand that the same shall be appraised. He may, nevertheless, make entry of the goods in the usual way as sound articles; but in that event, the collector has no authority to assess the duties upon an amount less than the invoice value. That rule for the assessment of duties was first prescribed in the act of the 20th of April, 1818, and it has been continued to the present time. (3 Stat. at Large, p. 433; 9 Stat. at Large, p. 213; 11 Stat. at Large, p. 199.)

It is insisted by the defendant that this provision in the act of the 30th of July, 1846, operates as a repeal of the fifty-second section of the act of the 2d of March, 1799; but it is obvious that the proposition cannot be sustained.

Looking at the practical operation of the revenue system, it is clear that the two provisions have no necessary connection the one with the other, because they respectively relate to proceedings altogether different. Duties are assessed upon goods entered at the custom house according to the invoice valuation and the value given in the entry, unless the goods are marked up by the local appraisers. Additions are often made by the local appraisers to the invoice valuation; and in that event the law allows the merchant an appeal to merchant appraisers, whose decision, by the act of the 3d of March, 1851, is declared to be final. But the act of the 3d of March, 1857, re-enacts the proviso contained in the eighth section of the act of the 30th of July, 1846, and extends the limitation to the entered value of the importaion, so that, under no circumstances, can the duty be assessed upon an amount less than the invoice or entered value. On the other hand, goods damaged in the course of the voyage are to be appraised before entry at the custom-house, under the regulations contained in the act of the first of March, 1823, and then the entry must conform to that appraisement. Entry in the one case is founded upon the invoice, with such additions thereto as the merchant may see fit to make in order to bring up the valuation to the actual

market value, and in the other upon the report of the appraisers. Under the first proceeding, the duties cannot be assessed upon an amount less than the invoice valuation; but under the latter proceeding, the duties must be calculated and assessed according to the report of the appraisers, wholly irrespective of the valuation given in the invoice. Applying these rules of law to the present case, it is obvious that the instructions of the Secretary of the Treasury to the collector were correct, and that the claim of the plaintiffs cannot be sustained. They did not cause the goods to be appraised under the law applicable to goods damaged in the course of the voyage, and no such appraisement has ever been made; but, instead thereof, they entered the goods at the custom-house according to the invoice valuation, took out a damage warrant, caused the amount of damage to the goods to be appraised and ascertained, and then claimed to have the amount deducted from the invoice and entered value. Referring to the acts of Congress already cited, it is clear that the request of the plaintiffs could not be granted either by the collector or by the department without violating a positive law; and it is no answer to this objection to say that the invoice valuation was the full value of the article in a sound state, because that admission does not give any different character to the proceeding on which the instructions of the Secretary of the Treasury were based. Protest was made upon the proceedings as they actually took place, and it does not vary the rights of the parties now to admit that the molasses was entered at the full value of sweet molasses.

That admission cannot change the fact that the goods were entered at the custom-house before any appraisement was made according to law, or that the duties were exacted and paid on the invoice valuation; and if not, then clearly the duties could not lawfully be assessed upon any less amount. Several other questions were discussed at the bar which it is not necessary to decide at the present time, as the point ruled will dispose of the case. According to the agreement of the parties a verdict must be taken for the defendant.

A true copy.

Attest: WILLIAM HENRY CLIFFORD,
Reporter.